

General Information Letter: Employer maintaining an office or transacting business in Illinois is require to withhold Illinois income tax from compensation paid in Illinois to its employees.

November 16, 1999

Dear:

This is in response to your recent e-mail messages dated November 10 and November 15, 1999. Given the nature of your inquiry and the information you provide, I am responding with a General Information Letter. This is not to be taken as a statement of Department policy or as a binding ruling by the Department. As general information gathered in response to your particular questions, however, I hope that it is helpful to you. See 86 Ill. Adm. Code 1200.120(b) and (c).

In your November 15 e-mail message you stated the following:

Hi, Mr. Steinkamp, I hope you got the fax below. I'm forwarding it here just in case. Basically, Ms. Evans indicated that doing business in Illinois requires an actual direct client in Illinois. Our client is in xxxxxx. It's their client that is in Illinois. In fact, that client is most likely unaware of our existence and perceives our partner there as being supplied by the prime contractor (our client). This is typical of a subcontracting arrangement in the computer consulting and contract programming industry. In fact, these prime contractors often get very defensive and paranoid if they think the consultant is promoting their own firm's business at the client site. They'd rather let the client think of the consultant as being supplied by the prime.

Hopefully, this provides you with a fuller understanding of the situation and why in this case it is my understanding that we don not need to register or pay business taxes in Illinois. Please let me know if this is incorrect. Thank you

### **Response**

I am sorry that my first letter inadequately explained the reasons for concluding that your firm is doing business in Illinois. You have written that an individual from your company is physically working within the State of Illinois. You said that he stays in hotels within this state and travels to his home state on most weekends. You also indicated that he might work in Illinois for six months. He is apparently not openly identified with your company, but is working in furtherance of a subcontract that your company has entered into with a xxxxx firm.

A further explanation of the phrase "transacting business within this State" is contained in Illinois regulations at 86 Ill. Admin. Code, Section 100.7020. That section reads as follows:

- a) General Rules. The phrase "employer transacting business within this State" includes any employer having or maintaining within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the employer or its subsidiary, irrespective of whether such place of

business or agent or other representative is located here permanently or temporarily, or whether such employer or subsidiary is licensed to do business in this State.

- b) Agents. It does not matter that an agent may engage in business on his own account in other transactions, nor that such agent may act as agent for other persons in other transactions, nor that he is not an employee but is an independent contractor acting as agent. The term "agent" is broader than the term "employee". "Agent" includes anyone acting under the principal's authority in an agency capacity.

It appears that the person in Illinois is working under the authority of your company and is either an employee or an agent of your company. The fact that your company is a subcontractor is not a determining factor. You are providing a service and the service is being performed physically within this State. Given this explanation, please refer to my prior letter for the tax consequences of doing business in Illinois. Brenda Evans and I have reviewed your activities in Illinois, as described above, and we are in full agreement as to the conclusions contained herein.

As stated above, this is a general information letter that does not constitute a statement of policy that applies, interprets or prescribes tax law. It is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b), previously mailed to you.

Sincerely,

Kent R. Steinkamp  
Staff Attorney -- Income Tax